

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**NOTICE OF MOTION FOR ENTRY
OF AN ORDER APPROVING PROPOSED PROCEDURES FOR
THE RETENTION OF EXPERTS AND PAYMENT OF EXPERT FEES AND
OTHER EXPENSES IN CONNECTION WITH ONGOING LITIGATION**

PLEASE TAKE NOTICE that, upon the accompanying declaration and memorandum in support of motion by Melanie L. Cyganowski, as Receiver duly appointed by the Court (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunity Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*”), the Receiver moves before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for

the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order Approving Proposed Procedures for the Payment of Expert Fees and Other Expenses in Connection with Ongoing Litigation (the “*Motion*”).

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be (i) made in writing; (ii) if by a party, electronically filed with the District Court; (iii) if by a non-party, electronically mailed to the Receiver, at her e-mail address, platinumreceiver@otterbourg.com, so as to be actually received no later than May 15, 2019.

PLEASE TAKE FURTHER NOTICE that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion, without further hearing or notice.

Dated: May 8, 2019

OTTERBOURG P.C.

By: /s/Adam C. Silverstein
Adam C. Silverstein
A Member of the Firm
230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
asilverstein@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

-----X	:	
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	Plaintiff,
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
PLATINUM CREDIT MANAGEMENT, L.P.;	:	
MARK NORDLICHT;	:	
DAVID LEVY;	:	
DANIEL SMALL;	:	
URI LANDESMAN;	:	
JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
	:	
	:	Defendants.
-----X	:	

**DECLARATION OF MELANIE L. CYGANOWSKI,
 AS RECEIVER, IN SUPPORT OF MOTION FOR ENTRY
 OF AN ORDER APPROVING PROPOSED PROCEDURES FOR
 THE RETENTION OF EXPERTS AND PAYMENT OF EXPERT FEES AND OTHER
EXPENSES IN CONNECTION WITH ONGOING LITIGATION**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunity Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, and Platinum Partners Liquid Opportunity Fund (USA) L.P. (the “*Receivership Entities*”). I submit this declaration in support of my Motion for Entry of an Order Approving Proposed Procedures for the Retention of Experts and Payment of Expert Fees and Other Expenses in Connection with Ongoing Litigation (the “*Motion*”).

PRELIMINARY STATEMENT

2. In the Motion, I respectfully request authority, in accordance with a protocol set forth in further detail therein and in my business judgment, to engage the services of, and to pay, certain consulting and/or testifying experts (the “*Experts*”) on behalf of the Receivership Entities and to pay other expenses associated with the litigations described below (the “*Litigation Expenses*”), without the necessity of further applications to this Court.

3. The proposed procedures are necessary to successfully pursue the causes of action that have been asserted or may be asserted by me on behalf of the Receivership, address exigent or unexpected circumstances in such litigations that may necessitate the retention of rebuttal or other experts and the incurrence of litigation expenses, and comply with tight scheduling timelines imposed by the court(s) and/or the arbitration panel in pending litigations that may render prior approval from this Court infeasible. The procedures also seek to balance the prejudice to the Receivership from unilaterally placing in the public domain the identities and scope of work of consulting experts utilized by my counsel, when the Federal Rules of Civil Procedure protect against such disclosure, with my continuing goal of transparency. With the assistance of these procedures, and the Experts to be retained thereunder, I will be better able to safeguard the interests of the Receivership Entities and maximize recovery for the investors.

4. For the reasons set forth herein, as well as in the contemporaneously filed Memorandum in Support of Motion for Entry of an Order Approving Proposed Procedures for the Payment of Expert Fees and Other Expenses in Connection with Ongoing Litigation, the Motion should be granted.

THE NECESSITY FOR EXPERTS AND LITIGATION SUPPORT SERVICES

5. In addition to the monetization of assets, potential sources of recovery for the Receivership Entities include claims by me as innocent successor to the Platinum Entities against

potentially liable parties. There are currently two ongoing litigations commenced by me on behalf of the Receivership Entities: (i) a confidential arbitration proceeding alleging malpractice against certain former auditors of certain Receivership Entities (the “*Arbitration*”) and (ii) a litigation against a group of defendants pending in the United States District Court for the Southern District of New York, seeking damages for claims arising from a scheme perpetrated to the detriment of Platinum, as well as the avoidance of certain liens which may otherwise adversely impact potential distributions to investors and creditors (the “*Beechwood Action*” and, together with the Arbitration, the “*Litigations*”). I continue to investigate other potential causes of action and additional litigations may be commenced in the future.

The Arbitration

6. On April 27, 2018, I timely commenced a confidential arbitration against one of the accounting firms and its affiliate (collectively, the “*Accounting Firms*”) that provided audit services to certain of the Receivership Entities, claiming that the Accounting Firms committed negligence, and breaches of contract, in conducting audits of the financial statements of certain of the Receivership Entities (the “*Audited Platinum Entities*”) for the fiscal year ended December 31, 2014. I am seeking monetary damages in an amount to be determined by the arbitration panel, consisting of three neutral arbitrators. The arbitration is still in the pre-hearing discovery phase, and a hearing is expected to take place in discovery. The parties to the arbitration have exchanged voluminous documents and the parties recently negotiated the terms on which the Accounting Firms will be granted access to millions of additional documents previously stored in Platinum’s e-mail archiving system. The current deadline for the completion of discovery is June 28, 2019.

The Beechwood Action

7. In addition to the Arbitration, on December 19, 2018, I commenced the Beechwood Action in the United States District Court for the Southern District of New York against (i) certain Beechwood entities, (ii) Senior Health Insurance Company of Pennsylvania, (iii) Fuzion Analytics, Inc., (iv) CNO Financial Group, Inc., (v) Bankers Consec Life Insurance Company, (vi) Washington National Insurance Company and (vii) 40|86 Advisors, Inc. The case is captioned “*Melanie L. Cyganowski, as Equity Receiver for Platinum Partners Credit Opportunities Master Fund LP, et al. v. Beechwood RE Ltd., et al.*” and is pending as Case 1:18-cv-12018 in the United States District Court for the Southern District of New York. I exercised my right under the applicable rules and orders of the Court to amend the original filed complaint, and, on March 29, 2019, filed the First Amended Complaint.

8. I allege in the First Amended Complaint that through their creation of Beechwood, a purported independent reinsurance entity, the Platinum insiders expanded a pre-existing fraud that personally enriched them through the generation of millions of dollars in management fees, incentive fees, false profits and other remuneration over the years. Certain of the defendants named in the First Amended Complaint are alleged to have substantially assisted, and participated with, Beechwood and the Platinum insiders to commit fraud and breach their fiduciary duties to Receivership Entities and/or to have received actual and constructive fraudulent conveyances. Specifically, these defendants – acting through Beechwood – structured and implemented a series of transactions that ultimately saddled the Receivership Entities with approximately \$69.1 million of debt owing to Beechwood, as agent for the insurers, secured by liens on substantially all of the Receivership Entities, and their affiliates’, assets, in consideration for assets that were worth a fraction of that amount.

9. I assert in the First Amended Complaint causes of action for, among other things, (i) violations of the Racketeer Influenced and Corrupt Organizations Act and/or federal securities fraud; (ii) aiding and abetting common law fraud; (iii) aiding and abetting breach of fiduciary duty; (iv) actual and constructive fraudulent conveyances; and (v) unjust enrichment. In addition to monetary damages, I seek to avoid the first-priority liens asserted against Receivership Entities' assets by certain defendants that may otherwise adversely impact potential distributions to investors and creditors. The Beechwood Action is currently in the discovery stage of litigation.

**THE PROPOSED PROCEDURES AND RETENTION OF EXPERTS
WILL BENEFIT THE RECEIVERSHIP ESTATE**

10. The Litigations each involve complex financial transactions undertaken by the Receivership Entities without my personal knowledge or that of my staff, and, in the case of the Arbitration, specialized accounting principles and auditing procedures. The Litigations also involve various measures and quantities of damages to the Receivership Entities. To successfully pursue the Litigations and maximize the potential to recover proceeds for the benefit of the Platinum estate, it is crucial that I be able to retain Experts, both on a consulting and testifying basis, to assist my counsel with the litigation and/or to provide expert opinions. Given the nature and complexity of the Litigations, the Receiver's counsel would substantially benefit from the assistance, on a consulting basis now and eventually, in all likelihood, on a testifying basis regarding in the case of the Arbitration, issues of auditor standards of care, generally accepted accounting principles and generally accepted auditing standards, and, in the case of all Litigations, a financial forensic review of the Receivership Entities' transactions, damages and valuations. Experts may also be required to rebut expert opinions offered by the opposing party.

It is almost a certainty that the defendants in each of the Litigations will designate their own expert witnesses.

11. At this juncture in the Litigations, I am not required to disclose the identities of Experts serving solely on a consulting basis for my counsel and I have not determined, and am not yet required, to identify any testifying Expert witnesses. Consequently, I request in the proposed procedures that I not now be required to publicly reveal the names of the Experts and the areas upon which the Expert will be consulted by counsel and/or may eventually testify. The opposing parties in the Litigations are not required to reveal the identities of any consulting experts utilized by their counsel and, at this point, any testifying expert witnesses. The Receivership would be severely disadvantaged by disclosing the identities of Experts assisting my counsel and who have not been, and may never be, designated to testify. Such disclosure would provide an information and preparation advantage that I would not enjoy, unfairly tilting then “playing field” in favor of my adversaries. To ensure accountability and transparency without unfairly disadvantaging the Receiverships’ prospects in the Litigations, I propose to share on a confidential basis the identities, services to be provided, and terms of the engagement of, each Expert engaged or to be engaged by my counsel to the Court and the SEC, and to publicly disclose such information to the extent, if and after such information is disclosed to my adversaries after any such Experts are designated to offer expert testimony.

12. In general, the Experts are highly credentialed and experienced individuals whose services are in high demand and my counsel must retain them expeditiously to assure receipt of their services. For these reasons, I may not always have the time to follow a formal retention application process for each. In addition, I anticipate that in the future, the need for additional Expert may arise. Such circumstances may require me to act to retain such Experts on a

timeframe more accelerated than would be possible were I required to first move before this Court, on notice to parties and parties-in-interest, with respect to these retentions.

13. Once retained, I also would be severely disadvantaged by the Experts having to submit time records disclosing the work they have performed at the request of counsel to the Receiver. Again, such disclosure – not reciprocated by my adversaries – would unfairly tilt the “playing field” against me, by giving a one-sided information and preparation advantage to my adversaries. Additionally, my selection of experts would be severely hampered by requiring that the experts not be compensated unless and until the experts’ compensation is approved by the Court. Accordingly, I propose to pay experts their reasonable fees and expenses pursuant to my business judgment on a monthly basis.

14. In addition to the retention and payment of Experts, I have and will incur certain Litigation Expenses that are common in large scale litigations of the type asserted (*e.g.*, the cost of hosting documents on a cloud based platform that can be accessed by the litigants). I must be able to pay such Litigations Expenses, in my business judgment, in the ordinary course.

15. I submit that the proposed retention and payment of Experts and the payment of Litigation Expenses pursuant to the procedures set forth below (the “*Procedures*”) are in the best interests of the Receivership Entities and their creditors. The relief requested will save the Receivership Entities the expense and time associated with applying separately to retain each Expert, will avoid the incurrence of additional fees for the preparation and prosecution of fee applications in this case and will protect the Receivership from disadvantage by unilaterally and/or prematurely having to disclose the identities of Experts utilized by my counsel in the Litigations. In addition, it will allow me to use my business judgment to act expeditiously as events in the Receivership warrant.

16. I propose the following Procedures:

- a. The Receiver shall be permitted in her business judgment to enter into any retention agreement with an Expert, without the need to file a separate retention application with the Court.
- b. Together with the filing of the Motion, the Receiver shall provide to the Court, upon request and *in camera*, and to the SEC, to be held on a confidential basis, a list of Experts retained or currently expected to be retained by her counsel, together with a description of their areas of expertise, services to be provided and terms of engagement.
- c. If the Receiver determines in her business judgment to retain any additional Experts, the Receiver shall be permitted to enter into additional retention agreements and to provide the names of such Experts and the information described in (a) above to the Court and to the Receiver.
- d. The Receiver shall be permitted to pay the fees and expenses of the Retained Experts from Receivership funds in accordance with the terms of their respective retention agreements without the need for the Expert to file a fee application.
- e. The Receiver shall disclose on the docket the names, qualifications and terms of engagement of the Experts to the extent and at such time that such information, if at all, is disclosed in the Litigations. The aggregate amount paid to Experts during each calendar quarter will be disclosed in the Receiver's quarterly reports filed with the Court.
- f. The Receiver shall be permitted to pay appropriate Litigation Expenses from Receivership funds in the ordinary course.

17. I reserve the right to (i) dispute any invoice submitted by any Expert, (ii) terminate the services of any Expert, and (iii) retain such further additional Experts from time to time as the need arises.

CONCLUSION

18. For the reasons set forth herein, I respectfully request entry of an order, in substantially the form annexed hereto as **Exhibit A**, allowing me to engage such Additional Limited Scope Professionals as I, in my business judgment, deem necessary to carry out my duties under the Receivership Order and to further the legal and business interests of the

Receivership Entities and that I be granted such other and further relief as the Court deems appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of May, 2019, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT A

PROPOSED ORDER

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
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Plaintiff,	:	
	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
PLATINUM CREDIT MANAGEMENT, L.P.;	:	
MARK NORDLICHT;	:	
DAVID LEVY;	:	
DANIEL SMALL;	:	
URI LANDESMAN;	:	
JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
	:	
Defendants.	:	
-----X		

[PROPOSED] ORDER APPROVING PROCEDURES FOR THE RETENTION OF EXPERTS AND PAYMENT OF EXPERT FEES AND OTHER EXPENSES IN CONNECTION WITH ONGOING LITIGATION

Upon the motion of Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunity Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, and Platinum Partners Liquid Opportunity Fund (USA) L.P. (the “*Receivership Entities*”), for Entry of an Order Approving Proposed Procedures for the Payment of Expert Fees and Other Expenses in Connection with Ongoing Litigation (the “*Motion*”),¹ and based on the Memorandum in Support of Motion (the “*Memorandum*”), the relief requested in the Motion is warranted.

NOW, THEREFORE after due deliberation and sufficient cause appearing therefor, it is

¹ Capitalized words not defined herein have the meanings ascribed to them in the Motion.

hereby:

ORDERED that the Receiver is hereby authorized to engage the services of, and to pay, Experts on behalf of the Receivership Entities and to pay other Litigation Expenses, without the necessity of further applications to this Court in accordance with the following Procedures:

- a. The Receiver shall be permitted in her business judgment to enter into any retention agreement with an Expert, without the need to file a separate retention application with the Court.
- b. Together with the filing of the Motion, the Receiver shall provide to the Court, upon request and *in camera*, and to the SEC, to be held on a confidential basis, a list of Experts retained or expected to be retained by her counsel, together with a description of their areas of expertise, services to be provided and terms of engagement.
- c. If the Receiver determines in her business judgment to retain any additional Experts, the Receiver shall be permitted to enter into additional retention agreements and to provide the names of such Experts and the information described in (a) above to the Court and to the Receiver.
- d. The Receiver shall be permitted to pay the fees and expenses of the Retained Experts from Receivership funds in accordance with the terms of their respective retention agreements without the need for the Expert to file a fee application.
- e. The Receiver shall disclose on the docket the names, qualifications and terms of engagement of the Experts at such time that such information, if at all, is disclosed in the Litigations. The aggregate amount paid to Experts during each calendar quarter will be disclosed in the Receiver's quarterly reports filed with the Court.
- f. The Receiver shall be permitted to pay appropriate Litigation Expenses from Receivership funds in the ordinary course.

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: Brooklyn, New York
May __, 2019

SO ORDERED:

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
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DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

MEMORANDUM IN SUPPORT OF MOTION OF MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN ORDER APPROVING PROPOSED PROCEDURES FOR THE RETENTION OF EXPERTS AND PAYMENT OF EXPERT FEES AND OTHER EXPENSES IN CONNECTION WITH ONGOING LITIGATION

Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunity Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*” or “*Platinum*”), through her counsel, Otterbourg P.C., respectfully submits this memorandum in support of her Motion for Entry of an Order Approving Proposed Procedures for the Retention of Experts and Payment of Expert Fees and Other

Expenses in Connection with Ongoing Litigation (the “*Motion*”). In support of the Motion, the Receiver states as follows:

PRELIMINARY STATEMENT

By this Motion, the Receiver respectfully requests authority, in accordance with a protocol set forth in further detail herein and her business judgment, to engage the services of, and to pay, certain consulting and/or testifying experts (the “*Experts*”) on behalf of the Receivership Entities and to pay other expenses associated with the litigations described below (the “*Litigation Expenses*”), without the necessity of further applications to this Court.

The proposed procedures are necessary for the Receiver to successfully pursue the causes of action that have been or may be asserted against various third parties, to address exigent or unexpected circumstances in such litigations requiring the retention of rebuttal or other experts and/or the payment of certain litigation expenses on short notice, and to comply with tight scheduling timelines imposed by the court and/or the arbitration panel overseeing pending litigations, rendering prior approval from this Court of expert retentions and/or payments infeasible. The proposed procedures seek to balance the prejudice to the Receivership from unilaterally placing in the public domain the identities and scope of work of consulting (non-testifying or not-yet-designated to testify) experts utilized by the Receiver’s counsel, when the Federal Rules of Civil Procedure protect against such disclosure, with the objective of transparency. The procedures will enable to the Receiver, or counsel to the Receiver, to engage in a manner designed to safeguard the interests of the Receivership Entities and maximize recovery for the investors.

For the reasons set forth herein, as well as in the Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order Approving Proposed Procedures for the

Payment of Expert Fees and Other Expenses in Connection with Ongoing Litigation (the “*Cyganowski Dec.*”), the Motion should be granted.

PROCEDURAL HISTORY

A. Case Filing and Appointment of Receivers

On December 19, 2016, in the above-captioned matter, the United States District Court for the Eastern District of New York (the “*Court*”) entered the Order Appointing Receiver, which was amended on January 30, 2017. [Docket Nos. 6 and 59].

On July 6, 2017, the Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., and appointed Melanie L. Cyganowski as Receiver effective immediately (*i.e.*, July 6, 2017). [Docket No. 216].

On October 16, 2017, this Court entered the Second Amended Order Appointing Receiver, Dkt. No. 276 (the “*Receivership Order*”). Among other powers, the Receivership Order granted the Receiver:

- a. “all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. 754, 959 and 1692, and Fed.R.Civ.P. 66.” Receivership Order Section I(3).
- b. “To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the Receiver’s duties as Receiver.” Receivership Order Section I(6)(D).
- c. “To engage and employ persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval.” Receivership Order Section I(6)(F).

B. Receivership Estate Litigations

In addition to the monetization of assets, potential sources of recovery for the Receivership Entities include claims by the Receiver as innocent successor to the Platinum Entities against potentially liable parties. Following an investigation by the Receiver and her professionals into the complicated series of transactions entered into during the years prior to the inception of Platinum's receivership, the Receiver has commenced, as discussed below, a (i) confidential arbitration proceeding for malpractice against certain former auditors (the "*Arbitration*") and (ii) litigation against a group of defendants pending in the United States District Court for the Southern District of New York, seeking damages for claims arising from a fraudulent scheme perpetrated to the detriment of Platinum, as well as the avoidance of certain liens which may otherwise adversely impact potential distributions to investors and creditors (the "*Beechwood Action*" and, together with the Arbitration, the "*Litigations*"). The Receiver continues to investigate other potential causes of action and additional litigations may be commenced in the future. Cyganowski Dec. ¶5.

1. The Arbitration

On April 27, 2018, the Receiver timely commenced a confidential arbitration against one of the accounting firms and its affiliate (collectively, the "*Accounting Firms*") that provided audit services to certain Receivership Entities, claiming that the Accounting Firms committed negligence, and breached their contractual obligations, in conducting audits of the financial statements of those Receivership Entities (the "*Audited Platinum Entities*") for the fiscal year ended December 31, 2014. The Receiver seeks monetary damages in an amount to be determined by the arbitration panel, consisting of three neutral arbitrators. The arbitration is still in the pre-hearing discovery phase, with a hearing in December expected. The Receiver and the Accounting Firms have exchanged voluminous documents and the parties recently negotiated the

terms on which the Accounting Firms will be granted access to millions of additional documents previously stored in Platinum's e-mail archiving system. The current deadline for the completion of discovery is June 28, 2019. Cyganowski Dec. ¶6.

2. The Beechwood Action

In addition to the Arbitration, on December 19, 2018, the Receiver commenced the Beechwood Action in the United States District Court for the Southern District of New York against (i) certain Beechwood entities, (ii) Senior Health Insurance Company of Pennsylvania, (iii) Fuzion Analytics, Inc., (iv) CNO Financial Group, Inc., (v) Bankers Consec Life Insurance Company, (vi) Washington National Insurance Company and (vii) 4086 Advisors, Inc. The case is captioned "*Melanie L. Cyganowski, as Equity Receiver for Platinum Partners Credit Opportunities Master Fund LP, et al. v. Beechwood RE Ltd., et al.*" and is pending as Case 1:18-cv-12018 in the United States District Court for the Southern District of New York. The Receiver exercised her right under the applicable rules and orders of the Court to amend the original filed complaint, and, on March 29, 2019, filed the First Amended Complaint. Cyganowski Dec. ¶7.

The Receiver alleges that through their creation of Beechwood, purported independent reinsurance and investment advisory entities, the Platinum insiders expanded a pre-existing fraud that personally enriched them through the generation of millions of dollars in management fees, incentive fees, false profits and other remuneration over the years. Certain of the defendants named in the Receiver's amended complaint are alleged to have substantially assisted, and participated with, Beechwood and the Platinum insiders to commit fraud and breach their fiduciary duties to the Receivership Entities, and/or to have received actual and constructive fraudulent conveyances. Specifically, these defendants – acting through Beechwood – structured and implemented a series of transactions that ultimately saddled Receivership Entities with

approximately \$69.1 million of debt owing to Beechwood, as agent for the insurers, secured by liens on substantially all of the Receivership Entities, and certain subsidiaries', assets, in consideration for assets that were worth a fraction of that amount. Cyganowski Dec. ¶8.

The Receiver asserts causes of action for, among other things, (i) violations of the Racketeer Influenced and Corrupt Organizations Act and/or federal securities fraud; (ii) aiding and abetting common law fraud; (iii) aiding and abetting breach of fiduciary duty; (iv) actual and constructive fraudulent conveyances; and (v) unjust enrichment. In addition to monetary damages, the Receiver seeks to avoid the first-priority liens asserted against the Receivership Entities' assets by certain defendants that may otherwise adversely impact potential distributions to investors and creditors. Cyganowski Dec. ¶9.

The Beechwood Action is currently in the discovery stage of litigation. The case is scheduled to be trial ready by October 28, 2019. Prior to the filing of the First Amended Complaint, one of the defendants filed a motion to dismiss, to which the Receiver responded. One of the defendants has filed an answer, cross-claims and third-party claims, and additional motions to dismiss, cross-claims and third-party actions are expected.

C. The Necessity for Experts and Litigation Support Services

The Litigations each involve complex financial transactions undertaken by the Receivership Entities without the personal knowledge of the Receiver and her staff, and, in the case of the Arbitration, also involve specialized accounting principles and auditing procedures. The Litigations also involve various measures and quantities of damages to the Receivership Entities ordinarily the subject of expert opinion. To successfully pursue the Litigations and better position the Receiver to recover proceeds for the benefit of the Platinum estates, it is crucial that the Receiver be able to retain Experts, both on a consulting and testifying basis, to assist the Receiver's counsel with the litigation and/or to provide expert opinions. Given the nature and

complexity of the Litigations, the Receiver's counsel would substantially benefit from expert assistance, on a consulting basis now and eventually, in all likelihood, on a testifying basis regarding, in the case of the Arbitration, issues of auditor standards of care, generally accepted accounting principles and generally accepted auditing standards, and, in the case of all Litigations, a financial forensic review of the Receivership Entities' transactions, damages and valuations. Experts may also be required to rebut expert opinions offered by opposing parties. It is almost a certainty that the defendants in each of the Litigations will designate their own expert witnesses. Cyganowski Dec. ¶10.

At this juncture in the cases, the Receiver is not required to disclose the identities of Experts serving solely on a consulting basis to assist her counsel and has not determined, and is not yet required, to identify any testifying Expert witnesses. Consequently, the Receiver is requesting in the proposed procedures that she not be required to publicly reveal the names of the Experts whom she wishes to retain and/or the areas upon which the Expert will be consulted by counsel and/or may eventually testify. The opposing parties are not required to reveal the identities of any consulting experts utilized by their counsel and, at this point, any testifying expert witnesses. Were the Receiver required to make these disclosures, she (and the Receivership) would be severely disadvantaged by (i) disclosing the identities of Experts assisting her counsel and who have not been designated to testify and (ii) prematurely revealing the identities of her testifying Experts. Such disclosure would provide an information and preparation advantage to opposing parties that the Receiver would not enjoy, unfairly tilting the "playing field" in favor of the Receiver's adversaries. To ensure accountability and transparency without unfairly disadvantaging the Receiver's prospects in the Litigations, the Receiver proposes to share on a confidential basis, with the Court and the SEC, the identities, services to be provided, and terms of the engagement of, each Expert engaged or to be engaged by her

counsel, and to publicly disclose such information to the extent such information is disclosed to the Receiver's adversaries after, if at all, Experts are designated to offer expert testimony, as further outlined in the proposed procedures below. Cyganowski Dec. ¶11.

In general, the Experts are highly credentialed and experienced individuals whose services are in high demand and who the Receiver's counsel must retain expeditiously to assure receipt of their services. Consequently, the Receiver likely will not have sufficient time to follow a formal retention application process for each. In addition, the Receiver anticipates that in the future, the need for additional Expert may arise. Circumstances such as these may require the Receiver to retain such Experts on a timeframe more accelerated than would be possible were the Receiver required to first move before this Court, on notice to parties and parties-in-interest, regarding such retentions. Cyganowski Dec. ¶12.

Once retained, the Receiver also would be severely disadvantaged by the Experts having to submit time records disclosing the work they have performed at the request of the Receiver's counsel. Again, such disclosure – not reciprocated by the Receiver's adversaries – would unfairly tilt the “playing field” against the Receiver, by giving a one-sided information and preparation advantage to her adversaries. Additionally, the Receiver's selection of experts would be severely hampered by requiring that the experts not be compensated unless and until the experts' compensation is approved by the Court. Accordingly, the Receiver proposes to pay experts their reasonable fees and expenses pursuant to her business judgment on a monthly basis. Cyganowski Dec. ¶13.

In addition to the retention and payment of Experts, the Receiver has and will incur certain Litigation Expenses that are common in large scale litigations of the type asserted (*e.g.*, the cost of hosting documents on a cloud based platform that can be accessed by the litigants).

The Receiver must be able to pay such Litigations Expenses, in her business judgment, in the ordinary course. Cyganowski Dec. ¶14.

RELIEF REQUESTED

Pursuant to Sections I(3), I(6)(D) and I(6)(F) of the Receivership Order, the Receiver seeks authority to:

- a. establish certain procedures to retain and compensate Experts that the Receiver deems in her business judgment appropriate to engage, effective *nunc pro tunc* to the date of the execution of their retention agreements with the Receiver on behalf of the Receivership Entities, without (i) the submission of separate employment applications or the issuance of separate retention orders for each Expert and (ii) without the need to disclose the identities of the Experts until a later date;
- b. compensate and reimburse such Expert without individual fee applications; and
- c. pay Litigation Expenses from estate funds in the ordinary course.

The Receiver submits that the proposed retention and payment of Experts and the payment of Litigation Expenses pursuant to the procedures set forth below (the “*Procedures*”) are in the best interests of the Receivership Entities and their creditors. The relief requested will save the Receivership Entities the expense and time associated with applying separately to retain each Expert, will avoid the incurrence of additional fees for the preparation and prosecution of fee applications and will avert disadvantaging the Receivership by unilaterally and/or prematurely having to disclose the identities of Experts utilized by her counsel in the Litigations. In addition, it will allow the Receiver to use her business judgment to act expeditiously as events in the Litigations warrant. Cyganowski Dec. ¶15.

The Receiver proposes the following Procedures:

- a. The Receiver shall be permitted in her business judgment to enter into any retention agreement with an Expert (consulting and/or testifying), without the need to file a separate retention application with the Court.
- b. Together with the filing of the Motion, the Receiver shall provide to the Court, upon request and *in camera*, and to the SEC, to be held on a confidential basis, a list of

Experts retained or currently expected to be retained by her counsel, together with a description of their areas of expertise, services to be provided and terms of engagement.

- c. If the Receiver determines in her business judgment to retain any additional Experts, the Receiver shall be permitted to enter into additional retention agreements and to provide the names of such Experts and the information described in (a) above to the Court and to the Receiver at or about the time of the retention.
- d. The Receiver shall be permitted to pay the reasonable fees and expenses of the Retained Experts from Receivership funds in accordance with the terms of their respective retention agreements without the need for the Expert to file a fee application.
- e. The Receiver shall disclose on the docket the names, qualifications and terms of engagement of the Experts to the extent, and at such time, that such information, if at all, is disclosed in the Litigations. The aggregate amount paid to Experts during each calendar quarter will be disclosed in the Receiver's quarterly reports filed with the Court.
- f. The Receiver shall be permitted to pay appropriate Litigation Expenses from Receivership funds in the ordinary course.

The Receiver reserves her right to (i) dispute any invoice submitted by any Expert, (ii) terminate the services of any Expert, and (iii) retain such further Additional Experts from time to time as the need arises.

CONCLUSION

For the reasons set forth herein and in the Cyganowski Dec., the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec., allowing the Receiver to engage and pay such Experts and pay any Litigation Expenses as she, in her business judgment, deems necessary to carry out her duties under the Receivership Order and to further the legal and business interests of the Receivership Entities and that she be granted such other and further relief as the Court deems appropriate.

Dated: New York, New York
May 8, 2019

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